

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, May 21, 2002.

PRESENT:	Kenneth Courtney	ALSO PRESENT:	Mark Stimac
	Marcia Gies		Allan Motzny
	Michael Hutson		Pam Pasternak
	Matthew Kovacs		
	Mark Maxwell		

ABSENT: Christopher Fejes  
Cynthia Pennington

Mr. Hutson stated that any petitioner wishing to postpone their request to allow for a full Board could speak at this time and request that their item be postponed.

**ITEM #10 (taken out of Order)– VARIANCE REQUESTED. ADAM PACHANA, 6787 LOCUST**, for relief to maintain an existing non-conforming addition that is located 7.4' from the side property line.

Mr. William Cohen, Attorney for Adam Pachana, stated that this item was back to the Board on a remand for a new hearing from the Circuit Court. Mr. Cohen stated that he had been notified of this hearing on Friday, and that the reason for a re-hearing was due to the existence of evidence that was not introduced at prior variance hearing. After the Court had heard this evidence it was decided that this item be sent back to this Board. Mr. Cohen stated that he has worked with Mr. Motzny on this appeal, and stated that he and his client are not ready or willing to present their case today, and would rather come back in a month and present their evidence.

Mr. Hutson asked how much notice had been received from the Court. Mr. Cohen was not sure of the time frame, and Mr. Motzny stated that the Court entered the Order on April 13, 2002. Mr. Cohen stated that he was notified that the meeting was to be held on the third Tuesday of May, but was under the impression the meeting would be held in June. He did not believe that there was enough time to get this item on tonight's Agenda. Mr. Cohen stated that he would like to have all the facts available for the Board to make a decision.

Motion by Courtney  
Supported by Maxwell

**ITEM #10 (taken out of order)**

MOVED, to postpone the request of Adam Pachana, 6787 Locust, for relief to maintain an existing non-conforming addition that is located 7.4' from the side property line, until the next regularly scheduled meeting of June 18, 2002.

- Postponing will allow Mr. Pachana's attorney to gather and prepare all evidence as deemed necessary.

Yeas: 5 – Gies, Hutson, Kovacs, Maxwell, Courtney

Absent: 2 – Fejes, Pennington

MOTION TO POSTPONE HEARING UNTIL MEETING OF JUNE 18, 2002 CARRIED

Mr. Cohen asked for a timetable when he could present his documentation, and Mr. Stimac stated that the documentation should be presented to the Building Department no later than June 4, 2002. Mr. Cohen stated that he would abide by that date.

Motion by Courtney

Supported by Gies

MOVED, to excuse Mr. Fejes and Mrs. Pennington from this meeting.

Yeas: 5 – Gies, Hutson, Kovacs, Maxwell, Courtney

MOTION TO EXCUSE MR. FEJES AND MRS. PENNINGTON CARRIED

**ITEM #1 – APPROVAL OF MINUTES – MEETING OF APRIL 16, 2002**

Motion by Courtney

Supported by Gies

Moved, to approve the minutes of the meeting of April 16, 2002 as written.

Yeas: 5 – Hutson, Kovacs, Maxwell, Courtney, Gies

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

**RENEWALS**

**ITEM #2 – RENEWAL REQUESTED. SPECIAL TREE REHABILITATION SERVICES, INC., 1640 AXTELL**, for relief of the 6' high masonry screening wall required along the north property line.

**ITEM #2 – con't.**

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board regarding the 6' high masonry-screening wall that is required along the north property line. This relief was originally granted in 1987 based on the fact that the residential land to the north is used by Michigan Bell for a switch station building. This item last appeared before this Board at the meeting of May 1999 and was granted a three (3) year renewal. Conditions remain the same and we have no complaints or objections on file.

Mr. Mike Malley of Special Tree Rehabilitation Services, Inc. was present and stated that he had nothing to add.

Motion by Maxwell  
Supported by Kovacs

MOVED, to grant Special Tree Rehabilitation Services, Inc., 1640 Axtell, renewal for three (3) years, for relief of the 6' high masonry-screening wall required along the north property line.

- The property to the north is not used for residential purposes
- Conditions remain the same.
- Variance is not contrary to public interest.

Yeas: 5 – Kovacs, Maxwell, Courtney, Gies, Hutson

MOTION TO GRANT VARIANCE RENEWAL FOR A PERIOD OF THREE (3) YEARS  
CARRIED

**ITEM #3 – RENEWAL REQUESTED. BETHESDA ROMANIAN CHURCH, 2075 E. LONG LAKE**, for relief of the 4'6" high masonry screening wall required along the east side off-street parking.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board regarding the 4'6" high masonry screening wall required along the east side of off-street parking. This item last appeared before this Board at the meeting of May 2000 and was granted a two (2) year renewal to allow the petitioner the opportunity to add additional plantings to screen the neighbor's property. Mr. Ron Hynd of the Parks and Recreation Department has attempted to get a letter of acceptance from the resident that borders the driveway, but as of this date has not obtained this letter.

Mr. Maxwell asked what type of screening is to be planted on the east side of the property, and Mr. Stimac stated that he thought that the screening was based on a specific plan. Mr. Maxwell stated that he found that most of the arborvitae which had been planted appears to be dead and would like to see new plantings added.

**ITEM #3 – con't.**

Reverend Simion Timbuc was present and stated that he did not think that the soil could support the arborvitae and they are checking with a landscape specialist to determine what else can be planted in this location. Reverend Timbuc also stated that the arborvitae are smaller than the existing vegetation, and are looking into other possibilities for screening. Mr. Maxwell also stated that there are a number of different types of plantings in this area and was concerned due to the fact that he thought it should be uniform to provide screening. Mr. Hutson stated that there is a solid wall of arborvitae, which appears to have put in by the neighbor and provides a great deal of screening along the east side. Mr. Maxwell also stated that he thought that the dead arborvitae should be removed and replanted with new shrubs.

Motion by Maxwell

Supported by Courtney

MOVED, to grant Bethesda Romanian Church, 2075 E. Long Lake, a one-year variance for relief of the 4'-6" high masonry screening wall required along the east side of off-street parking.

- One-year will allow enough time for the dead shrubbery to be replaced.
- Time limit will allow the Church to work with the City to determine what other types of screening can be provided.
- One-year will allow the City to obtain written approval from the neighbor.

Yeas: 5- Kovacs, Maxwell, Courtney, Gies, Hutson

MOTION TO GRANT VARIANCE FOR ONE (1) YEAR CARRIED

**ITEM #4 – VARIANCE REQUESTED. HARRY JAVENS, 3200 ESSEX,** for relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming structure.

Mr. Hutson explained that at the time Mr. Javens home was built before the setback was changed, and that at the time the home was built, it was considered "legal". The City has since changed the setbacks, and now Mr. Javens' home is considered a "legal non-conforming structure". Mr. Hutson further explained that Mr. Javens is requesting permission to expand this legal non-conforming structure and that is the reason Mr. Javens is before the Board. Mr. Huston also stated that the Board is aware of the concerns of Mr. Javens' neighbors have regarding the maintenance of the property. He asked that the speakers at the public hearing keep to the matter before the Board.

Mr. Stimac explained that the petitioner is requesting relief to construct a second floor addition to his home. The survey submitted indicates that the existing house has a 36.6' rear yard setback and a proposed second floor addition continuing the 36.6' rear setback. Section 30.10.04 requires a 40' minimum rear yard setback for R-1C zoning. This structure is classified as a legal non-conforming structure. Section 40.50.04

**ITEM #4 – con't.**

prohibits expansions of legal non-conforming structures in a way that increases its non-conformity.

This item appeared on your agenda of April 16, 2002 and was postponed at the request of the petitioner.

Mr. Harry Javens was present and stated that he wished to construct a second floor addition to the property and would be in violation of the rear yard setback.

The Chairman opened the Public Hearing.

Sandra Smith, 3232 Essex, was present and stated that her property is two doors to the west of Mr. Javens' home. Ms. Smith stated that she is concerned about the safety of the neighborhood and have been concerned with changes made to the property since last fall. Ms. Smith also stated that she is concerned that if the variance were granted, the neighbors would have to put up with an extended period of construction and debris on the property. Ms. Smith further stated that the present condition of the property has greatly detracted from the neighborhood and is afraid that the appearance of the property would get worse.

Mary Jo Czarnecki, 2543 Wexford, was present and stated that the side of her home faces the front of Mr. Javens' home, and said that in two and one-half years, the appearance of this home has not changed. Ms. Czarnecki further stated that she had gone to Mr. Javens' home and offered them help to fix up their home. Appearance of home has gotten worse in two and one-half years due to shingles falling off and debris around the home. Ms. Czarnecki also stated that this home is considered to be somewhat of an eyesore and also a nuisance. Ms. Czarnecki informed the Board that she is the Vice-President of the Home Owners Association and would be glad to answer any questions the Board may have.

Lori Monacelli, 3421 Medford was present and stated that she is on the other side of the subdivision but said that she has to pass Mr. Javens' home when she comes into the subdivision. Ms. Monacelli stated that variances are considered a privilege and she is concerned because Mr. Javens has thoroughly proven to the neighbors, by his neglect of the property that he could not handle this variance. Ms. Monacelli also stated that past experience has shown that Mr. Javens would not adhere to completing this construction in a timely manner.

John Gielniak, 3373 Essex was present and stated that this home is one of the first you see when you come into the subdivision. Mr. Gielniak also stated that in the twenty (20) years he has been in this area, this home has not been taken care of. Mr. Gielniak stated that if the variance were to be granted, the construction would not be done in a timely manner and the home would continue to be in disrepair and unsightly.

**ITEM #4 – con't.**

Bill Carlson, 3216 Essex was present and stated that he lives right next door to Mr. Javens and supports all the statements made by the other neighbors. Mr. Carlson stated that this property has always been an eyesore, and although he tried to sell his home was unable to do so because of the appearance of Mr. Javens home.

Mr. Kovacs asked Mr. Carlson how long this property had been in disarray and Mr. Carlson stated that Mr. Javens has not improved the home at all in twenty (20) years.

Mary Ann Petrillo, 2558 Wexford was present and stated that she is two doors east of Mr. Javens' property and has been there at least sixteen (16) years. Ms. Petrillo stated that at the time she moved in this property looked bad, and now it looks terrible. Ms. Petrillo also stated that she agrees with everything her neighbors said and stated that a variance is a privilege and also stated that it is unbelievable to live as close to a home that looks as bad as this one. Ms. Petrillo has also stated that Mr. Javens has done absolutely nothing to improve this property, and that if the variance is granted without time constraints this home will continue to deteriorate.

Ms. Smith addressed the Board again and said that when her daughter graduated in 1988, siding was torn off the garage at Mr. Javens home.

Trudy Barone, 2574 Wexford was present and stated that she lives next door to Mr. Javens. Ms. Barone stated that she does not object to the variance as it concerns the property, however, she further stated that without stipulations from the Board regarding completion of the work in a timely manner, she is concerned that the property would continue to look unsightly as it does now.

The Vice-Chairman closed the Public Hearing at this time.

There are eighteen (18) written objections on file. There are two (2) written approvals.

Mr. Kovacs stated that this variance could only be granted if it did not cause an adverse effect to the surrounding property, and asked Mr. Javens if after hearing all of the concerns voiced by his neighbors, what kind of guarantee could he give that this variance would not have an adverse effect to surrounding property. Mr. Javens stated that the variance and Building Permit would allow him to build a second floor addition, and when it was completed he would add new siding, new roofing material as well as new gutters. Mr. Javens also stated that if the variance were to be granted it would affect the property in a positive way. Mr. Kovacs then asked Mr. Javens who would be responsible for doing the work. Mr. Javens stated that he plans to do most of the work himself and that he is a licensed builder in the State of Michigan. Mr. Javens also stated that he had spoken to Scott Dunbar of Dunbar Construction and said he has a letter that says if he is not able to get the work done within the allowable time of the Building Permit, Dunbar Construction would take over the construction.

**ITEM #4 – con't.**

Ms. Gies asked Mr. Javens what his expected time frame was for completion of this work, and Mr. Javens stated that he knows the Building Permit is valid for one-year, and he thought it could be completed by then. Ms. Gies then asked when he would determine that he could not complete the work, and would need to hire Dunbar Construction. Mr. Javens stated that Scott Dunbar indicated that he would need eighteen (18) to twenty (20) weeks to complete the work and he would contact them by the six-month point if he felt that he could not complete the work.

Mr. Kovacs stated that he thought Mr. Javens' neighbors would be more comfortable knowing an outside contractor was hired from the beginning of the construction and Mr. Javens stated that due to finances he would rather do the work himself.

Mr. Hutson stated that he was concerned due to the fact that since 1987 Mr. Javens has had fifty-seven (57) complaints and has been issued twelve (12) misdemeanor citations regarding building violations. Mr. Hutson went on to say that because of past history, it appears that Mr. Javens would not adhere to time constraints. Mr. Javens stated that he has every intention of completing this project on time and would make a commitment to do this. Mr. Javens also stated that this request for a variance is not an unusual request, and would like to have the opportunity to demonstrate that he can complete this project in a timely manner.

Mr. Maxwell asked if there are any current violations, and Mr. Stimac stated that there is a violation regarding the siding on the house, however, enforcement on this has been held in abeyance until the Board acts on this variance request. Mr. Stimac further stated that most of the citations have been issued since 1997. Mr. Maxwell further stated that he would like to see Mr. Javens clean up his property first and then come back to the Board for a variance request.

Mr. Courtney stated that the reason we have the request is because the City changed the setback requirement and the City created the real problem. Mr. Courtney feels that the approval of the addition would have a positive effect. Mr. Maxwell stated that he does not feel that any motivation would be provided if the variance were to be granted, and thinks the property should be cleaned up first.

Ms. Gies stated that she is concerned that if Mr. Javens runs out of money, he would be unable to hire an outside contractor to complete the construction.

Mr. Javens stated that he would be willing to put up a \$3,000.00 performance bond and Mr. Hutson asked Mr. Stimac and Mr. Motzny if the City had a policy to cover this. Mr. Motzny stated that he was not familiar with a variance that would be granted on condition of a performance bond and stated that the Ordinance does not provide any stipulations to cover this. Mr. Stimac stated that even if a bond is required for the completion of construction, it would be very difficult to determine the amount that would be required to either clean up or complete the construction.

**ITEM #4 – con't.**

Mr. Kovacs stated that he is very concerned about the condition of this property and stated that he hopes Mr. Javens can prove to this Board that he is willing and able to improve his property.

Motion by Courtney  
Supported by Gies

MOVED, to postpone the request of Mr. Harry Javens, 3200 Essex, for relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming structure until the next regularly scheduled meeting of June 18, 2002.

- Tabling will allow the petitioner the opportunity to clean up his property.
- 30-day period will allow the petitioner to demonstrate to his neighbors a commitment to repair his property.

Yeas: 3 – Courtney, Gies, Kovacs  
Nays: 2 – Hutson, Maxwell

MOTION TO TABLE REQUEST UNTIL JUNE 18, 2002 CARRIED

**ITEM #5 – VARIANCE REQUESTED. MR. ENCLOSURE, REPRESENTING MR. & MRS. TOPACIO, 2250 CUMBERLAND,** for relief of the rear yard setback to construct a three-season room.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct a three-season room. The site plan submitted indicates construction of a three-season room addition resulting with a proposed 30.8' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

Mr. Rick Hadad of Mr. Enclosure, and Mr. Topacio were present. Mr. Hadad explained that they plan to put this three-season room over an existing structure. He stated that he felt that the purpose of the required setback was to provide an openness in the yard however, on all three sides of the property there is an existing privacy fence as well as mature shrubbery. Mr. Hadad does not believe this room would cause an adverse effect to surrounding property.

Mr. Hutson opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are three (3) written approvals on file. There are no written objections on file.

Motion by Maxwell  
Supported by Courtney

**ITEM #5 – con't.**

MOVED, to grant Mr. Enclosure, representing Mr. & Mrs. Topacio, 2250 Cumberland, relief of the rear yard setback to construct a three-season room.

- Variance request is minimal.
- Variance would not have an adverse effect to surrounding property.
- Variance is not contrary to public interest.

Yeas: 5 – Courtney, Gies, Hutson, Kovacs, Maxwell

**MOTION TO GRANT VARIANCE CARRIED**

**ITEM #6 – VARIANCE REQUESTED. MR. & MRS. MICHAEL DARMANIN, 670 TRINWAY**, for relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming structure.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a second floor addition. The site plan submitted indicates that the existing house has a 5.1' side yard setback to the west property line. Section 30.10.04 requires a minimum 10' side yard setback in the R-1C Zoning District. The existing house is classified as a legal non-conforming structure. The proposed second floor addition continues the existing 5.1' side yard setback. This expansion of the legal non-conforming structure is prohibited by Section 40.50.04 of the Troy Zoning Ordinance.

Mr. & Mrs. Darmanin were present. Mrs. Darmanin explained that their lot is very long and narrow. Mrs. Darmanin went on to say that they need to add this addition due to the fact that her elderly mother will be moving in with them and they need the extra room to accommodate her. Mr. Darmanin also stated that they had attempted to add on the back of their home, however, the cost was prohibitive and therefore feels that the only alternative they have is to build up.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written approvals on file. There are no written objections on file.

Motion by Kovacs  
Supported by Maxwell

MOVED, to grant Mr. & Mrs. Darmanin, 670 Trinway, relief of Paragraph A of Section 40.50.04 of the Zoning Ordinance to construct a second floor addition that will expand a legal non-conforming structure.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies to this property only.

**ITEM #6 – con't.**

Yeas: 5 – Courtney, Gies, Hutson, Kovacs, Maxwell

MOTION TO GRANT VARIANCE CARRIED

**ITEM #7 – VARIANCE REQUESTED. MR. KENT MELLEBRAND, 1065 HARTLAND,** for relief of the ordinance to construct a 576 square foot detached garage which will exceed the maximum allowable square footage for accessory buildings on a property.

This item was moved to the end of the Agenda, Item #13, to allow the petitioner the opportunity to be present.

**ITEM #8 – VARIANCE REQUESTED. MS. CARMEN COLLINS, 2236 ISABELL,** for relief of the side yard setback requirement to construct a detached garage.

The Vice-Chairman stated that the Building Department had received a request from the petitioner to postpone this item until the June Board of Zoning Appeals meeting.

Motion by Courtney  
Supported by Maxwell

MOVED, to postpone the request of Ms. Carmen Collins, 2236 Isabell, for relief of the side yard setback requirement to construct a detached garage until the meeting of June 18, 2002.

- To allow the petitioner the opportunity to be present.

Yeas: 5 – Gies, Hutson, Kovacs, Maxwell, Courtney

MOTION TO POSTPONE THIS REQUEST UNTIL JUNE 18, 2002 CARRIED

**ITEM #9 – VARIANCE REQUESTED. STANLEY MILLS, 2064 HIGHBURY,** for relief of the rear yard setback to construct a rear addition.

Mr. Stimac explained that the petitioner is requesting relief of the rear yard setback to construct a rear yard addition. The site plan submitted indicates a bedroom addition with a proposed 33.3' rear yard setback. Section 34.20.03 requires a 35' minimum rear yard setback in the R-1C Zoning District.

Mr. Stanley Mills was present and stated that the reason he needs to add an addition is because his elderly father is going to move in with him, and due to his health would like to provide enough room so that it will be wheel chair accessible. Mr. Mills also stated that they had explored the possibility of putting the addition in another location, however, they have determined that this would be the best location for it.

**ITEM #9 – con't.**

Mr. Courtney informed Mr. Mills that if the addition were reduced by 1'-7" a variance would not be required, and Mr. Mills stated that he believes he needs the room larger because of the possibility of wheelchair access.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one written approval on file. There are no written objections on file.

Motion by Maxwell

Supported by Gies

MOVED, to grant Stanley Mills, 2064 Highbury, relief of the rear yard setback to construct a rear addition.

- Literal interpretation of the Ordinance would be unnecessarily burdensome.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect on surrounding property.

Yeas: 5 – Hutson, Kovacs, Maxwell, Courtney, Gies

MOTION TO GRANT VARIANCE CARRIED

**ITEM #11 – VARIANCE REQUESTED. Murray Scott, 3831 Kingspoint,** for relief of the ordinance to construct a 50' radio antenna structure.

Mr. Stimac explained that the petitioner is requesting relief of the ordinance to construct a 50' tall amateur radio antenna structure. The site plan submitted indicates a proposed 50' high freestanding antenna structure. Section 40.57.06 limits the height of this structure to 25' in the R-1C Zoning District. The Board should note the specific consideration requirements of Paragraph B, of Section 43.80.00 of the Zoning Ordinance.

Mr. Murray Scott was present and stated that he had brought a letter of support from the Oakland County Emergency Management Corporation and also a letter from his wife indicating her support. Mr. Scott stated that he volunteers with Oakland County and holds an amateur radio license. Mr. Scott explained that there are two other structures in the subdivision.

Mr. Hutson asked if a tower of lesser height would allow Mr. Scott to use his radio. Mr. Scott stated that you can use a tower of any height, however, the higher tower would provide better performance and more reliable communications. Mr. Scott also stated that the higher tower would be safer for the neighbors and cause less interference.

**ITEM #11 – con't.**

Mr. Courtney stated that everyone that asks for a letter from Oakland County usually gets a letter of support. Mr. Scott stated that he is a volunteer but is also the assistant emergency coordinator for logistics for Oakland County, and devotes a lot of time to this. Mr. Scott also stated that he has worked with Chief Nelson of the Troy Fire Department when there have been phone problems in Troy. Mr. Scott stated that the amateur radio operators act as back up for Troy and/or Oakland County.

Mr. Kovacs stated that some of the objections relate to radio interference. Mr. Stimac stated that interference is not the jurisdiction of the Building Department, but fall under the FCC. Mr. Stimac stated that he believed that if there was interference it would be a violation of Mr. Scott's license. Mr. Scott stated that he did not want to cause problems for his neighbors, and was willing to work with them.

Mr. Maxwell stated that he feels that this structure would be too large for the size of this lot. Mr. Maxwell went on to say that he felt this tower would be much more conducive to a larger lot. Mr. Scott stated that if the tower were to fail, he did not think it would fail from the bottom, but would fail from the top. Mr. Scott also stated that he did not think this tower would be an eyesore, but would eventually blend with the surrounding area.

Mr. Hutson asked if Mr. Scott was using his radio equipment and Mr. Scott stated that he is not using the high frequency equipment right now. Mr. Scott also stated that although he could use a 25' tower, but a 50' tower would allow him greater flexibility to reaching other areas.

The Vice-Chairman opened the Public Hearing.

Philip Ode, 4508 Whisper Way was present and stated that he belongs to the same radio club as Mr. Scott. Mr. Ode stated that he had worked with City Council to change the Ordinance regarding radio towers. Mr. Ode went on to say that the height of the radio tower determines the clarity of the signal and when you get closer to the ground, you set up more ground waves and could cause more interference with TV's and radios. Mr. Ode also said that they are regulated by the FCC regarding the clarity and purity of the signal and the FCC will come out and check to make sure that they are in compliance. Most of the televisions are supposed to be made according to FCC regulations. Mr. Ode stated that the height of the tower reduces the current density of the radio waves due to the fact that everyone is concerned today about radiation and amateur radio operators can legally put out 1500 watts. By bringing the tower lower, you are generating more radiation. Amateur radio operators as defined by the FCC are not a commercial service, because of what they do, they cannot collect any money for their services. Mr. Ode also said that the only reliable form of communication during an emergency is through amateur radio.

Nancy Ferguson, 3963 Knox, was present and stated that she lives three houses away from Mr. Scott and she is against this request. Ms. Ferguson stated that she is very concerned about the telephones, baby monitors and does not think that the antenna

**ITEM #11 – con't.**

would be aesthetically pleasing. Mr. Kovacs asked Ms. Ferguson if she would rather have the antenna higher with less radiation at ground level, or would she rather have an antenna, which would be lower to the ground and produce more radiation. Ms. Ferguson asked if there was any way they could be guaranteed that there would be no interference with a tower. Ms. Ferguson stated that they would prefer not having an antenna at all, however, if she has to have a tower she would rather have a shorter tower. Ms. Ferguson also asked what recourse they would have if the antenna were put in and it created problems for the residents. Mr. Courtney stated that they could go to Mr. Scott and express their concerns and if that didn't work, they had the option of going to the FCC.

Howard Dennis, 1575 Abbey Drive, was present and stated that he is representing the Raintree Village Homeowners Association and said his heart is not really in this objection, due to the fact that he thinks Mr. Scott provides a necessary service. Mr. Dennis also stated that the Homeowners Association has made every attempt to protect the appearance of this Subdivision, and they object to a 50' tower because of the appearance. Mr. Dennis said that he would not want to live near this tower. Mr. Dennis also said that he thought that eventually this tower would come down and he thought that people with children had a right to be concerned about whether or not this tower would fall. Mr. Dennis also thinks that the height of the tower should be held at 25'.

Linda Carr, 3945 Knox was present and stated that she lives right next door to Mr. Scott and they have not had any problems with them, however, feels that the 50' tower is too high. Ms. Carr states that she knows that would have to put up with a 25' tower, but does not want one that is 50' high. Ms. Carr stated she was not clear on the location of the tower, and Mr. Stimac pointed out that according to the plans it would be placed about 3' from the back wall of the rear of the house. Ms. Carr stated that the children run from yard to yard because there are no fences and she is concerned about them going near the tower.

Ms. Carr also thinks that this tower would act as a lightning rod and is concerned about that factor.

Mr. Kovacs asked Ms. Carr if she would be more concerned about the tower falling or the radio waves emanating from the tower. Ms. Carr states that a friend in the subdivision near another tower has trouble with her electrical appliances when that tower is in use. Ms. Carr states that she is still against a tower. Ms. Carr understands that he can put up a 25' tower, however, she objects to a 50' tower.

Mr. Courtney stated that if a higher tower was put in, there would be less interference. Ms. Carr stated that she objects to the height of the tower. Mr. Courtney stated that he thought that the higher tower would cause less interference, however, Ms. Carr stated she still objects to the height of the tower.

**ITEM #11 – con't.**

James Ferguson, 3963 Knox was present and stated that he objects to the height of the tower due to the fact that he is concerned about the safety of the children in the area. Mr. Ferguson also stated that he does not believe a 50' tower would offer protection for his grandchildren or other children in the area. Mr. Ferguson also stated that he has been in communications for 36 years and also thinks that this tower will act as a lightning rod. Mr. Courtney stated that he has read a number of articles regarding FCC regulations and the higher the tower, the less impact from the radio waves. Mr. Courtney also does not feel a tower has as great of chance of falling as a TV antenna. Mr. Ferguson also expressed concern that children would be tempted to climb this tower.

Mr. Ferguson stated that he does not want to see a 50' tower in this subdivision; he also understands that Mr. Scott can put up a 25' tower, but does not want a 50' tower. Mr. Kovacs asked Mr. Ferguson if he was more concerned about the radiation coming from the lower tower as compared to the wave propagation with the higher tower. Mr. Ferguson stated that he is against all towers, however, because he realizes that Mr. Scott can have a 25' tower, he wants to voice his opinion against a 50' tower.

Mr. Maxwell pointed out that if they are against the height of the tower, they can express their concerns to the City Administration.

Mr. Stimac stated that if you double the height of the tower you cut the radio waves by one-fourth. Mr. Stimac also stated that the federal regulation that governs the use of amateur radio basically says that the City cannot adopt an ordinance that effectively prohibits the use of amateur radios. Depending on the location, the minimum height of the tower would vary. Mr. Stimac also explained that the City does not issue or revoke licenses, but the City does have the right to protect the interests of other residents in the City.

Mr. Scott stated that there would not be any guy wires around the tower and also stated that the tower would be grounded to protect it from lightning strikes. Mr. Scott said that he thought there was a greater danger of falling trees rather than the tower falling. Mr. Scott also indicated that they would provide boards that would prevent children from climbing this tower. Mr. Scott also stated that anyone with a radio scanner can monitor what goes on in a home through a baby monitor.

James Ransone, 3908 Nash was present and stated that he thought a higher tower would create more radio signals. Mr. Ransone stated that he objects to this tower because he thinks it would be an eyesore and is also concerned about interference.

No one else wished to be heard and the Public Hearing was closed.

There are sixteen (16) written objections on file. There is one (1) approval on file.

**ITEM #11 – con't.**

Motion by Kovacs

Supported by Maxwell

MOVED, to deny the request of Mr. Scott, 3831 Kingspoint, relief of the Ordinance to construct a 50' radio antenna structure.

- Variance request would have an adverse effect on surrounding property.
- Neighbors do not want a 50' tower due to safety and interference concerns.
- Did not meet the requirements of Section 43-80

Yeas: 3 – Kovacs, Maxwell, Hutson

Nays: 2 – Courtney, Gies

MOTION TO DENY REQUEST CARRIED

**ITEM #12 – VARIANCE REQUESTED. Cordell Craig, 366 W. Maple (proposed address),** to construct a car wash, which will have the stacking lane 12' from the R-1E Zoned property at the northeast corner of the site.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to construct a car wash at 366 W. Maple (proposed address). This proposal appeared on your agenda of February 19, 2002 regarding a request for a reduced side yard setback along the west property line. During the staff review of the site plan, another item requiring the Board's action was overlooked. Section 23.30.04 of the Zoning Ordinance requires that drives providing stacking spaces for car washes be a minimum of 25' from any Residential District. The plans indicate that the stacking lane will be located 12' from the R-1E Zoned property at the northeast corner of the site. Mr. Stimac also pointed out that the stacking lane would actually be next to the detention pond for this subdivision.

Mr. Cordell Craig was present and stated that he did not feel that the location of the stacking lane would have any impact on the adjacent residential property. Mr. Craig also stated that the proposed location of the stacking lane would not cause cars to back up onto Maple Road, which could create a traffic hazard. Mr. Craig said that they plan on moving the cars as quick as possible through the car wash.

The Vice-Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There is one written objection on file. There are no written approvals on file.

Motion by Courtney

Supported by Maxwell

**ITEM #12 – con't.**

MOVED, to grant Cordell Craig, 366 W. Maple (proposed address), relief to construct a car wash, which will have the stacking lane 12' from the R-1E Zoned property at the northeast corner of the site.

- Variance is not contrary to public interest.
- The adjacent residential property is actually a detention pond.
- Variance will not have an adverse effect on surrounding property.

Yeas: 5 – Maxwell, Courtney, Gies, Hutson, Kovacs

MOTION TO GRANT REQUEST CARRIED

**ITEM #13 (ITEM #7) – VARIANCE REQUESTED. MR. KENT MELLEBRAND, 1065 HARTLAND**, for relief of the ordinance to construct a 576 square foot detached garage which will exceed the maximum allowable square footage for accessory buildings on a property.

This item was moved to the end of the Agenda, Item #13, to allow the petitioner the opportunity to be present.

Motion by Courtney  
Supported by Gies

MOVED, to postpone the request of Mr. Kent Mellebrand, 1065 Hartland, for relief of the ordinance to construct a 576 square foot detached garage, which will exceed the maximum allowable square footage for accessory buildings on a property until the meeting of June 18, 2002.

- Tabling will allow the petitioner the opportunity to be present.

Yeas: 5 – Courtney, Gies, Hutson, Kovacs, Maxwell

MOTION TO POSTPONE REQUEST UNTIL JUNE 18, 2002 CARRIED

The Board of Zoning Appeals meeting adjourned at 9:55 P.M.

MS/pp